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Attorneys for Defendant
MARK LESLIE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MARK LESLIE, KENNETH E.
LONCHAR, PAUL A. SALLABERRY,
MICHAEL M. CULLY AND DOUGLAS
S. NEWTON,

Defendants.

Case No. 5:07-cv-03444-JF

**DEFENDANT MARK LESLIE'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO DISMISS
COMPLAINT OR, IN THE
ALTERNATIVE, TO STRIKE
PRAYER FOR PENALTIES**

Date: January 18, 2008
Time: 9:00 a.m.
Dept.: Courtroom 3, 5th Floor
Judge: Honorable Jeremy D. Fogel

Date Complaint Filed: July 2, 2007
Date Set For Trial: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Evidence 201, Defendant Mark Leslie hereby requests that, in connection with the Motion to Dismiss the Security and Exchange Commission's Complaint for violation of the Federal Securities Laws ("Complaint"), the Court take judicial notice of the following documents attached to the Declaration of Jessica K. Nall:

MARK LESLIE'S REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF MOTION TO DISMISS COMPLAINT
CASE NO. 5:07-CV-03444-JF

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Documents incorporated by reference in but not attached to the Complaint:

Exhibit A: Mark Leslie's email to Veritas Software Corporation's ("Veritas") Board of Directors and Audit Committee dated October 2, 2000.

Exhibit B: Audit Committee Member Steve Brooks' email to Veritas' Board of Directors dated October 3, 2000.

SEC Filings:

Exhibit C: Veritas' Form 10-K for the fiscal year ended December 31, 2000, filed with the SEC March 29, 2001.

Exhibit D: Veritas' Form 10-K/A filed with the SEC on March 17, 2003

Exhibit E: Veritas' Form 8-K filed with the SEC on October 12, 2000 announcing Veritas' financial results for Q3 2000.

Exhibit F: Veritas' Form 8-K filed with the SEC on January 24, 2001, announcing Veritas' financial results for Q4 2000.

I. ARGUMENT

On a motion to dismiss, the Court "may take judicial notice of documents on which allegations in [the Complaint] necessarily rely, even if not expressly referenced in the [Complaint], provided the authenticity of those documents [is] not in dispute." *In re Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1076 (N.D. Cal. 2003) (citing *Parrino v. FHP, Inc.*, 146 F. 3d 699, 705-6 (9th Cir. 1998); *Branch v. Tunnell*, 14 F. 3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F. 3d 1119 (9th Cir. 2002)). This Court should take judicial notice Exhibits A and B because they are documents expressly referenced in the Complaint and no party questions their authenticity. *Id.*; (Complaint ¶¶ 27-28).

This Court should also take judicial notice of Exhibits C-G is because they are on file with the Securities and Exchange Commission, a public agency, they are directly referenced or relied upon in the Complaint, and their validity is not subject to honest dispute. (Complaint ¶¶ 14, 49 and 50); *See In re Calpine*, 288 F. Supp. 2d at 1076 *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999)(allowing judicial notice of SEC documents).

Defendant's request should be granted because Defendant Leslie is only requesting that the Court take notice of the existence and contents of the documents, not the truth of the statements in the documents.

1 **II. CONCLUSION**

2 For the foregoing reasons, Defendant Leslie's Request for Judicial Notice should be
3 granted.

4 Dated: October 5, 2007

FARELLA BRAUN + MARTEL LLP

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6 By: /s/ Douglas R. Young

Douglas R. Young

7 William P. Keane

8 Attorneys for Defendant
9 MARK LESLIE
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